



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: October 11, 2013


TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
James Freas, Chief Planner, Long-Range Planning
Amanda Stout, Senior Planner, Long-Range Planning

RE: #296-13: ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** by reorganizing and clarifying the provisions regarding purchase and renter income limits, and sale and rental price limits.

MEETING DATE: October 16, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor



EXECUTIVE SUMMARY

The purpose of this memo is to review proposed revisions to the inclusionary zoning provisions of the Zoning Ordinance for clarity and simplicity; as well as specific measures to add predictability to the calculation of income limits; to specify how unit size and income limits are related; and to define "affordability" for rental and for-sale units.

BACKGROUND

In mid-2012, a small joint working group was formed by the Economic Development Commission (EDC) and the Newton Housing Partnership (NHP) to identify and draft proposals for improvement to the current Inclusionary Zoning regulations in Chapter 30 Section 24(f). As the EDC and NHP observed, the definition of "inclusionary units" in the Zoning Ordinance is lengthy and leaves certain sections open to interpretation. The suggested revisions aim to address the clarity issues and reorganize the section.

ANALYSIS

The proposed amendment below takes a significant amount of text from 30-24(f)(1)(b), where these items are sub-sections under “Definitions, Inclusionary Zoning,” and moves it to sub-sections under 30-24(3) “Inclusionary Units.” This reorganization enhances clarity without policy changes.

Some of the revisions, however, are more substantial and are designed to lead to greater predictability for both the City and for developers, particularly in setting prices for for-sale and rental units. Thus, a developer calculating the rental rate or sale price for inclusionary units must:

1. Identify household size appropriate to the units created;
2. Use household size to determine the correct Area Median Income (AMI) number; and
3. Use AMI to calculate affordable monthly payment based on the definition of affordability.

1. Tie Unit Size to Household Size

The ordinance currently uses two measures to calculate rent or sale prices based on the number of bedrooms in a unit. For for-sale units, the “household size” is defined as “the number of bedrooms plus one.” Thus, a two-bedroom unit equates to a three-person household and a three-bedroom unit equates to a four-person household. For rental units, the “household size” is defined as “1.5 times the number of bedrooms,” rounded up. Thus, a two-bedroom unit equates to a three-person household while a three-bedroom unit equates to a five-person household (4.5, rounded up). The proposed text would use the former method (number of bedrooms plus one) for both rental and for-sale units. This change brings the ordinance in line with Massachusetts practice, as it is the same methodology that the State uses to calculate appropriate household size. Furthermore, while the new policy uses this “unit size” figure to consistently determine “household size,” it does not explicitly tie “unit size” to “affordability” for the purpose of calculating rents or sale prices.

e.g., three-bedroom rental unit → assume four-person household
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2. Use Household Size to calculate AMI and clarify which figure is used for AMI

The U.S. Department of Housing and Urban Development (HUD) publishes the industry standard figures for Area Median Income (AMI), which is an important piece of data in calculating inclusionary housing. For federal FY2013, HUD reports that the AMI for the Boston-Cambridge-Quincy Metropolitan Statistical Area (MSA) for a four-person household is \$97,800. Eighty percent of this figure is \$78,240. For this MSA, however, HUD has established a different figure as the official “80% AMI” number: \$67,350. Thus, whenever “80% of AMI” needs to be used in Newton, the official HUD number is used. Likewise, HUD publishes an official number for “60% of AMI” for the MSA, which is \$56,640.

The complication ensues when a different value needs to be calculated, for example, 70% of AMI. There has been inconsistency and confusion as to whether this is calculated as 70% of the true AMI (i.e. 70% of \$97,800 = \$68,460) or a number that is halfway between the HUD 60% and 80% figures (i.e.

halfway between \$56,640 and \$67,350 = \$61,995). The City calculates the figure using the latter method. As the EDC/NHP memo states, it is important to be clear that the dollar amounts of income limits to be used under Newton's Zoning are to be based on income levels as published by HUD, and where HUD has no published figure, to be determined by the City. Clarifying that the City defines this number in the "Definitions" section of the Inclusionary Zoning ordinance is a step toward transparency and predictability for developers.

e.g., four-person household → 80% AMI for four-person household as published by HUD = \$67,350
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3. Define affordability based on a percentage of Household Income

The proposed 30-24(f)(3)(b)(i) "Sales unit price limit" and proposed 30-24(f)(3)(b)(iv) "Rental unit price limit," add language defining "affordability" that is not currently in the Inclusionary Zoning ordinance, but that is consistent with Newton's goals. For for-sale units, the new language defines the price as affordable "if the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, hazard insurance, and one parking space do not exceed 30 percent of the monthly income of a household at the assumed household size. Buyers will be eligible so long as their total housing cost including the services identified above does not exceed 38% of their income." For rental units, the proposed language defines inclusionary units as those for which "the monthly rent payment, including one parking space and including heat, hot water, and electricity shall not exceed 30 percent of the applicable household income limit for the Inclusionary Unit, adjusted downward for any of those services not included."

e.g., 80% AMI for four-person household = \$67,350/(divided by 12) = \$5,613 monthly income 30% of monthly income = \$1,684 "affordable" monthly rent
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As the EDC/NHP memo notes, the proposed text amendment uses "number of bedrooms plus one" consistently when calculating household size, but it uses a different calculation (30% of income) when referring to household income limit and, thus, defining "affordability" for rental charges or sales prices. Standardizing these three metrics in the Ordinance (as opposed to Inclusionary Zoning Guidelines) lends predictability to the process for the City and developers.

PROPOSED AMENDMENT

1. Revise terminology for clarity and predictability. Delete the content of 30-24(f)(1)(a) and replace with the new text as below.

'Household income limit' at any given percentage of the area median income (AMI) shall be defined as being the income limit adjusted by household size at that percentage as published by the U.S.

Department of Housing and Urban Development (HUD) for the designated statistical area that includes the City of Newton or, for percentage levels not published by HUD, as calculated by the City.

~~“Eligible Household” shall mean: for rental housing, any household whose total income does not exceed 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size; and in the case of for sale housing, any household whose total income does not exceed 120 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size, which is defined as the number of bedrooms plus one.~~

2. Revise and significant shorten 30-24(f)(1)(b) Definitions.

b) “Inclusionary Unit(s)” shall mean any finished dwelling unit that meets the provisions of Section 30-24(f)(3) Inclusionary Units. ~~required to be for sale or rental under section 30-24(f) of the zoning ordinances.~~

- ~~i) — For Inclusionary Units that are rented to Eligible Households, the monthly rent payment, including utilities and parking, shall not exceed 30 percent of the monthly income of an Eligible Household, assuming 1.5 persons per bedroom, except in the event of an Eligible Household with a Section 8 voucher in which case the rent and income limits established by the Newton Housing Authority, with the approval of the U.S. Department of Housing and Urban Development, shall apply.~~
- ~~ii) — The sales price of inclusionary units for sale shall be affordable to an eligible household having an income ten (10) percentage points lower than the maximum eligible income for that unit as provided in section 30-24(f)(1)a). For example, if the maximum eligible income for the unit is based upon household incomes at 120% of the area median income then the maximum sales price must be affordable to households at 110% of the area median income.”~~
- ~~iii) — Where fewer than three Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size.~~
- ~~iv) — Where three or more inclusionary units are provided in a development under section 30-24(f)(3), the eligible household income limit for at least two thirds of the inclusionary units offered for sale (rounded to the nearest whole number) shall be not more than 80% of the area median income at the time of marketing. The eligible household income~~

~~limit for the remaining inclusionary units may be set at any level(s) up to 120% of the area median income at the time of marketing.~~

- ~~v) — Where two or more Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for rental shall be provided to Eligible Households such that the mean income of Eligible Households in the development does not exceed 65 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size. Where one Inclusionary Unit is provided in a development under section 30-24(f)(3), the Inclusionary Units required to be offered for rental shall be provided to an Eligible Household with a median income of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size.~~
- ~~vi) — Inclusionary units must be qualified as ‘Local Action Units’ pursuant to the requirements of the Comprehensive Permit Guidelines of the Massachusetts Department of Housing and Community Development, Section VI.C Local Action Units, as in effect June 1, 2009 unless:
 - ~~a. The income eligibility for the unit exceeds 80% of the area median income, or~~
 - ~~b. The unit is exempted from this requirement by another provision of section 30-24(f), or~~
 - ~~c. The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the MDHCD regulations or guidelines.”~~~~

3. Revise 30-24(f)(3)(a) and (b) Inclusionary Units, adding much of the language formerly in 30-24(f)(1)(b). This change also addresses the aforementioned inconsistency in how household size and bedroom count are related and adds the policy change to define “affordability.”

~~(3) Inclusionary Units. Where a special permit is required for development as described in section 30-24(f)(2), inclusionary units shall be provided equaling no fewer than 15% of the number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be retained. For purposes of calculating the number of inclusionary units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. Inclusionary units shall be offered for sale or rental in the same proportion of the total units as the offer for sale or rental of market rate units in the development.”~~

(3) Inclusionary Units.

- a) *Number required.* Where a special permit is required for development as described in section 30-24(f)(2), inclusionary units shall be provided equaling no fewer than 15% of the

number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be retained. For purposes of calculating the number of inclusionary units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. Inclusionary units shall comprise at least 15% of the units to have been offered for sale or rental at each point in the marketing of the development.

b) *Rent and sale price limits.* Rent and sale price limits for inclusionary units shall be set based on the assumption that household size equals the number of bedrooms plus one, regardless of the actual number of persons occupying the unit, as may be further specified in guidelines provided by the City in its then-current Affordable Rent or Sales guidelines or, if not specified there, as specified by DHCD in its Local Initiative Guidelines for 'Maximum Sales and Rents,' as most recently revised at the time of marketing.

i) *Sales unit price limit.* Inclusionary units for sale shall be priced to be affordable to a household having an income ten (10) percentage points lower than the income limit for that unit as provided in subparagraphs (ii) and (iii) below and the assumed household size based on paragraph b) above. The price is 'affordable' if the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, hazard insurance, and one parking space do not exceed 30 percent of the monthly income of a household at the assumed household size. Buyers will be eligible so long as their total housing cost including the services identified above does not exceed 38% of their income.

ii) *Purchaser income eligibility limit: fewer than three for-sale units.* Where fewer than three Inclusionary Units are provided in a development under section 30-24(f)(3), the household income limit for those units shall be 80% of the AMI and the Inclusionary Units shall be priced for affordability to households having incomes of not more than 70 per cent of the AMI at the time of marketing of the Inclusionary Units in question.

iii) *Purchaser income eligibility limit: three+ for-sale units.* Where three or more inclusionary units are provided in a development under section 30-24(f)(3), for at least two-thirds of the inclusionary units offered for sale (rounded to the nearest whole number) the household income limit shall be not more than 80% of the AMI and the sales price shall be affordable at not more than 70% of the AMI at the time of marketing. The sales price for the remaining inclusionary units may be set based on any level(s) up to a household income limit of 120% and a sales price affordable at 110% of the AMI at the time of marketing.

- iv) Rental unit price limit. Inclusionary rental units are to be priced to be affordable to a household having an income at the household income limit for that unit as provided in subparagraphs (v) and (vi) below. For Inclusionary Units, the monthly rent payment, including one parking space and including heat, hot water, and electricity shall not exceed 30 percent of the applicable household income limit for the Inclusionary Unit, adjusted downward for any of those services not included. For a household with a Section 8 voucher, the rent and income limits are to be as established by the Newton Housing Authority with the approval of the U.S. Department of Housing and Urban Development.
- v) Renter income eligibility limit: two+ rental units. Where two or more Inclusionary Units are provided for rental in a development under §30-24(f)(3), the percentage of AMI used for establishing rent and income limits for all inclusionary units in the development shall average no more than 65 percent of the AMI. Alternatively, where two or more Inclusionary Units are provided for rental in a development under section 30-24(f)(3), they may be provided such that at least fifty percent (50%) of such units are priced for households having incomes at 50% of the area median income, and all other remaining Inclusionary Units are priced for households having incomes at 80% of the AMI.
- vi) Renter income eligibility limit: one rental unit. Where only one Inclusionary Unit is provided in a development under section 30-24(f)(3), the Inclusionary Unit shall be priced for a household income limit and rental affordability at not more than 80 percent of the AMI.

4. Add 30-24(f)(3)(c), which is a revision of 30-24(f)(1)(b)(vi), for clarity.

Existing 30-24(f)(1)(b)(vi), deleted above.

~~Inclusionary units must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the Massachusetts Department of Housing and Community Development, Section VI.C Local Action Units, as in effect June 1, 2009 unless:~~

- ~~a. The income eligibility for the unit exceeds 80% of the area median income, or~~
- ~~b. The unit is exempted from this requirement by another provision of section 30-24(f), or~~
- ~~c. The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the MDHCD regulations or guidelines."~~

New 30-24(f)(3)(c)

- c) Qualification as Local Action Units. Inclusionary units must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the Massachusetts Department of Housing and Community Development, Section VI.C Local Action Units, as in effect June 1, 2009 as the same may be amended from time to time, unless:
- i) The household income limit for the unit exceeds 80% of the AMI, or
 - ii) The unit is exempted from this requirement by another provision of section 30-24(f),
or
 - iii) The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the DHCD regulations or guidelines.

NEXT STEPS

If the Zoning and Planning Committee agrees with the analysis provided by the Planning Department, staff recommends this item be scheduled for a Public Hearing on November 13, 2013. If further consideration is necessary, staff requests the Zoning and Planning Committee provide direction to staff as to what additional data and analysis it may need to inform further its discussion.